IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12347 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVIN N WAGHELA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12347 of 2000

MR RD RAVAL for Petitioner No. 1

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 12/10/2004

ORAL JUDGEMENT

The petitioner in the present petition intends to challenge his termination from service and also prays for regularisation in service. Earlier the petitioner had approached the Labour Court as well as the Gujarat Civil

Services Tribunal, challenging his termination, however, both the authorities found that they have no jurisdiction. In fact the petitioner's earlier petition being Special Civil Application No. 4122 of 2000 also came to be rejected, whereby the learned Judge was pleased to hold that the Labour Court as well as the Government Civil Service Tribunal are correct in coming to the conclusion that the proceedings filed by the petitioner are not maintainable. However, the petitioner was given a liberty to challenge the impugned order of termination by approaching a Civil Court or the High Court under Article 226 of the Constitution of India. Accordingly, the petitioner has filed the present petition.

2. In view of the fact that the petitioner was only a daily wager and engaged by the respondents as and when work was available, the learned Counsel for the petitioner is unable to sustain his challenge to the order of termination. No illegality has been pointed out to enable this Court to hold that the termination of the petitioner was illegal. In this view of the matter, the prayer of the petitioner for setting aside his termination and for regularisation cannot survive.

3. The Counsel for the petitioner however submits that the respondents, particularly respondent No.2 requires daily wagers from time to time. He has submitted that though the petitioner had worked for substantial period of time before his services were terminated, the respondent No.2 is not engaging the petitioner but junior persons or even fresh recruits are being engaged, presumably on account of pendency of the litigation initiated by the petitioner.

While rejecting the main prayer made by the petitioner, it is observed that if the respondent No.2 requires to engage daily wagers on the post of the petitioner in which he was working, case of the petitioner shall be considered in accordance with law and on the seniority, and the petitioner's action of earlier approaching Courts of law will not come in his way in getting work on daily wage basis in accordance with law.

In the result, petition is disposed of. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

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